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09/839,245	04/23/2001	J. Edward Cichanowicz	023407-00000	4003

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EXAMINER

GORT, ELAINE L

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 12/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/839,245

Applicant(s)

CICHANOWICZ, J. EDWARD

Examiner

Elaine Gort

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the selected non-commodity item" in line 29. There is insufficient antecedent basis for this limitation in the claim. There is no prior claiming of selecting a non-commodity item.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katz et al. (US Patent 5,224,034) in view of Vandiver, III (US Patent 5,033,004). Katz et al. discloses an automated method for conducting buy and sell transactions over a network for a non-commodity material or item that can have differing chemical and physical and/or electrical characteristics comprising: a plurality of sellers each providing

to the network product characteristics via a computer of a quantity of the non-commodity available for sale and a cost of the available non-commodity, creating a database of the non-commodity including information relating to each non-commodity available (such as when sellers input product information, quantity and price information into the computer system); a buyer providing to the network a performance simulation model of a process with equipment in operation or intended to be in operation and with a desired amount of the non-commodity for use in the process (such as when the buyer provides product constraints and/or product requirements which identify products and when buyer indicates their desired volume/demand) the performance simulation model being able to estimate the production cost and operating characteristics of the process based on a non-commodity material or item used in the process (for example when the system carries out the algorithm to determine the optimal purchasing strategy in view of the product price, discount data and constraints; cost of products are estimates of the production cost and operating characteristics include the use of the listed products); the buyer also providing desired operating characteristics of the process that are dependent upon the non-commodity material or item (such as when the buyer provides desired operating characteristics of the process that are dependent upon the product when the buyer provides constraints relating to the goods they desire to purchase); estimating the cost of operating the process or producing goods from the process for at least some of the different non-commodities from the database of different non-commodities in the performance model to make a comparison of the at least some of the different non-commodities to determine which, if any, of the at least some of the different non-

commodities are within the maximum process cost (such as when the system estimates the cost for the different products based on discount data for comparison, the cost of the products roughly estimates the cost of operating a process of producing goods when the product purchased makes up the majority of the cost to produce, such as in the power generation business); and providing the buyer with a list of non-commodities that when used as input for the process provide certain operating characteristics (buyer is presented an optimal list of selected products based on the demand and constraints which the buyer provided that correlate to the buyers operating system).

Katz et al. discloses the claimed automated method for conducting buy and sell transactions over a network for a non-commodity material or item that can have differing characteristics but is silent regarding the buyer and seller specifically providing physical, chemical and/or electrical characteristics of the product and the utilization of a database and standard datamining techniques to record performance of the process with the selected non-commodity item and applying this information in the formulation of a request-for-proposal for future purchases of non-commodity materials or items.

Vandiver, III discloses that it is known in the art to provide a method of selling material with differing characteristics (such as coal) wherein the buyer and seller provide physical, chemical, and/or electrical characteristics of non-commodity materials (such as sulfur, ash, moisture, Btu/lb, etc.) which represent operation characteristics of the process in order to model the optimal blends to determine minimum cost blends to meet environmental and energy production requirements (such as the buyer being a coal burning utility which needs a blended coal to meet parameter requirements for sulfur

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emissions and to meet power generation requirements at the minimum cost, see column 4, lines 14+). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method for conducting buy and sell transactions of Katz et al. with the buyer and seller providing physical, chemical, and/or electrical characteristics which represent desired operating characteristics as taught by Vandiver, III, with the motivation to be that the system could model and determine the optimal blends for buyers to determine minimum cost blends to meet environmental and energy production requirements.

Regarding the use of standard datamining techniques to record performance of the process with the selected non-commodity item and applying this information in the formulation of a request-for-proposal for future purchases of non-commodity materials or items, Examiner takes official notice that it is notoriously old and well known in the art of modeling for buyers to track the performance of products used in order to modify the model to emulate actual results and buyers would use their experience to modify future purchasing constraints and product requirements in order to improve the performance of their production system. Examiner takes further official notice that standard datamining techniques are old and well known in the art of computer systems for the purpose of acquiring knowledge (laws and regularities) automatically from data in order to achieve an business objective of an enterprise such as identifying critical characteristics of products used. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method for conducting buy and sell transactions of Katz et al. and Vandiver, III, as modified above, with the use of

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datamining techniques to automatically acquire knowledge from buyer's performance of products used and using this knowledge to alter future request-for-proposals of Examiner's Official Notice with the motivation that buyers could automatically acquire knowledge to improve their systems by acquiring better more cost effective non-commodity items.

Regarding the buyer providing a desired maximum power generation cost, it is notoriously old and well known in the art of trade for buyers to present to their suppliers their operating demands including maximum prices they can pay for generating especially when the major production costs for power generation is coal. Coal costs roughly estimate the maximum generation costs.

Regarding transportation costs being incorporated in the system, Vandiver, III discloses in column 3 that transportation costs are used in the system in order to account for costs associated with transportation of the coal.

### ***Response to Arguments***

5. Applicant's arguments filed 10/16/03 have been fully considered but they are not persuasive.

Applicant has argued that neither Katz et al. nor Vandiver teach or suggest a buyer providing to a computer network a performance simulation model. Examiner contends that the system of Katz et al. and Vandiver both disclose the buyer providing to a computer network a performance simulation model when the buyer provides product requirements and constraints (in Katz et al.) and provides specific percentages

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of sulfur, ash, moisture, and Btu/lb (in Vandiver) at these limitations represent a model of the chemical, mechanical, or electrical process of the buyer's equipment currently in operation or intended to be in operation.

Applicant further argues that neither Katz et al. nor Vandiver teach or suggest the buyer providing a maximum cost of operating the process. Examiner contends that claim 1 does not require this limitation because of the "or" used in lines 15 and 16 and instead require the buyer provide desired operating characteristics—such as product requirements and constraints such as Btu/ton, percent sulfur, which Examiner contends Katz et al. and Vandiver teach.

See above rejection regarding all further arguments.

Potential areas of patentability may exist relating to further claiming limitations disclosed in the specification relating to the model.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the



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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is (703)308-6391. The examiner can normally be reached on Monday through Thursday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703)308-5183. The fax phone number for the organization where this application or processing is assigned is (703)872-9327.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

EG



December 3, 2003



ROBERT P. OLSZEWSKI  
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